

## **REMARKS**

In this response to the above identified Office Action, Applicants respectfully request reconsideration in view of the following remarks. No claims have been amended, cancelled or added. Accordingly, claims 1-43 are pending in the application.

### **I. Claims Rejected Under 35 U.S.C. § 102**

Claims 1, 2, 4-6, 16-29, 31-33 and 39-43 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,440,726 issued to Fuchs et al. (hereinafter "Fuchs"). Applicants respectfully disagree for the following reasons.

To anticipate a claim, a single reference must disclose each element of that claim. Claims 1 and 28 include "clearing the first set of data by the second network process if a time period expires; and synchronizing by the second network process the first set of data with a second set of data if the time period does not expire, the second set of data received from the first network process after the first network process restarts." Applicants believe that Fuchs does not teach these elements of claims 1 and 28. The cited parts of the reference (col. 8 lines 29-57, col. 24 lines 33-43, col. 27 lines 65-68, col. 10 line 14 – col. 11 line 18, and col 25 lines 35-65) teach the use of checkpoints and recovery line calculation, but do not disclose the above-mentioned elements of claims 1 and 28. Therefore, Fuchs does not teach each of the elements of claims 1 and 28. If Examiner maintains this rejection of claims 1 and 28, Applicants respectfully request that Examiner clarify how the cited sections teach these elements of claims 1 and 28. Specifically, Applicants request that Examiner clarify where Fuchs discloses clearing data or synchronizing data based on whether a time period has expired, as it appears to Applicants that the checkpoint and recovery line calculation process does not utilize time-out mechanisms.

Accordingly, reconsideration and withdrawal of the anticipation rejection of claims 1 and 28 are requested.

Claims 2, 4-6, 29 and 31-33 depend from independent claims 1 and 28, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 1 and 28, these claims are not anticipated by Fuchs. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Claim 16 includes “the first network process to generate a first set of data before restarting and a second set of data after restarting, the second network process to synchronize for itself the first and second set of data upon determining a time period has not expired, the time period beginning when the first network process dies.” Applicants believe that Fuchs does not teach these elements of claim 16. The cited parts of the reference (col. 11 lines 22-66, col 13 line 38 – col. 14 line 47) teach the use of a watchdog, but Applicants have been unable to discern any explicit teaching of Fuchs that the watchdog utilizes time-out periods or the above-mentioned elements of claim 16. Therefore, Examiner has failed to establish that Fuchs teaches each of the elements of claim 16. Accordingly, reconsideration and withdrawal of the anticipation rejection of claim 16 are requested.

Claims 17-19 depend from independent claim 16 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 16, these claims are not anticipated by Fuchs. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Independent claims 20 and 24 include elements similar to those of independent claim 16 including “using the first and second set of data if a time period has not expired, the time period beginning when the first network process dies” (emphasis added) and “start[ing] a counter upon determining the first network process has died, . . . and . . . synchroniz[ing] for itself the first and

second set of data upon determining the counter has not exceeded a time period” (emphasis added). Thus, at least for the reasons mentioned above in regard to independent claim 16, Fuchs does not anticipate each of these claims. Further, Examiner has not indicated and Applicants have been unable to discern any part of Fuchs that teaches the elements of claims 20 and 24 not included in claim 16. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Claims 21-23 and 25-27 depend from independent claims 20 and 24, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 20 and 24, these claims are not anticipated by Fuchs. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Examiner asserts that claims 39 and 43 contain limitations substantially similar to claims 1 and 16 and are therefore rejected under the same basis. For at least the reasons mentioned above in regard to independent claims 1 and 16, claims 39 and 43 are not anticipated by Fuchs. Further, Examiner has not indicated and Applicants have been unable to discern any part of Fuchs that teaches the elements of claims 39 and 43 not included in claims 1 and 16. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Claims 40-42 depend from independent claim 39 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 39, these claims are not anticipated by Fuchs. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

## II. Claims Rejected Under 35 U.S.C. § 103

Claims 3, 7-11, 30 and 34-48 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,681,389 issued to Engel et al. (hereinafter "Engel") in view of U.S. Patent No. 5,938,775 issued to Damani et al. (hereinafter "Damani"). Claims 12-15 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,694,450 issued to Kidder et al. (hereinafter "Kidder") in view of Damani. (Although Examiner states initially that the rejection is over Damani in view of Kidder, the discussion of the rejection is apparently based on one over Kidder in view of Damani.) Applicants respectfully disagree for the following reasons.

To establish a *prima facie* case of obviousness Examiner must show that the cited references, combined, teach or suggest each of the elements of the claims. Claims 7 and 34 recite "if a first set of data is generated by the first network process before a time period expires, then synchronizing by the second network process the first set of data with a second set of data, the second set of data having been generated by the first network process before the death of the first network process." Applicants believe that these elements of the claims are not taught or suggested by Engel in view of Damani. Examiner cites Damani for "rollback-synchronization among the processes . . . if the time period expires" (emphasis added) (see Office Action, p. 7). Claim 7 and 34, however, recite synchronizing "if a first set of data is generated by the first network process before a time period expires" (emphasis added). Examiner has failed to allege and Applicants have been unable to discern any part of Engel or Damani that teach these elements of claims 7 and 34. Thus, Engel in view of Damani does not teach or suggest each of the elements of the claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 8-11 and 35-38 depend from independent claims 7 and 34, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 7 and 34, Engel in view of Damani does not teach or suggest each of the elements of these claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claim 12 recites “second network process to synchronize for itself the first set of data with a second set of data generated by the first network process before restarting upon determining a time period has not expired, the time period beginning when the first network process dies.” Applicants believe that these elements of the claims are not taught or suggested by Kidder in view of Damani. Examiner cites Damani for “rollback-synchronization among the processes . . . if the time period expires” (emphasis added) (Office Action, p. 9). Claim 12, however, recites a “second network process to synchronize for itself the first set of data with a second set of data generated by the first network process before restarting upon determining a time period has not expired, the time period beginning when the first network process dies” (emphasis added). Examiner has failed to allege and Applicants have been unable to discern any part of Kidder or Damani that teach these elements of claim 12. Thus, Kidder in view of Damani does not teach or suggest each of the elements of the claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 13-15 depend from independent claim 12 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 12, Damani in view of Kidder does not teach or suggest each of the elements of these claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

### **CONCLUSION**

In view of the foregoing, it is believed that all claims now pending, namely claims 1-43, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If Examiner believes that a telephone conference would be useful in moving the application forward to allowance, Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

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### **CERTIFICATE OF MAILING:**

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Annie McNally      Date